

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CASE NO. 5:16-CV-298-BO**

GARY AND ANNE CHILDRESS,)	
RUSSELL AND SUZANNAH HO,)	
MICHAEL CLIFFORD, DAVID)	
CAVENDER, RUSTY DAVIS,)	
CHRISTOPHER DERINGER, CHRISTINA)	
DUNCAN, ROBIN HINSON, AND DAVID)	
ORTIZ, <i>on behalf of themselves and others</i>)	
<i>similarly situated,</i>)	PLAINTIFFS' MOTION FOR PARTIAL
)	SUMMARY JUDGMENT ON
Plaintiffs,)	LIABILITY
)	
v.)	
)	
JP MORGAN CHASE BANK, N.A., and)	
CHASE BANK USA, N.A.,)	
)	
Defendants.)	

NOW COME Plaintiffs and Class Representatives Gary and Anne Childress, Russell and Suzannah Ho, Michael Clifford, David Cavender, Rusty Davis, Christopher Deringer, Christina Duncan, Robin Hinson, and David Ortiz (collectively “Plaintiffs”), by and through counsel, and hereby respectfully move, pursuant to Federal Rule of Civil Procedure 56, for partial summary judgment and declaratory relief establishing Defendants JP Morgan Chase Bank, N.A.’s and Chase Bank USA, N.A.’s (collectively “Chase’s”) liability for violating the Servicemembers Civil Relief Act (“SCRA”) and breaching their contract with Plaintiffs.

Specifically, Plaintiffs seek an order from the Court that:

(1) Chase is estopped from arguing that class members whom it accepted into its SCRA benefits program were not eligible for SCRA benefits or did not meet the SCRA’s criteria for interest rate benefits.

(2) The 6 percent per year interest rate limitation of Section 527 of the SCRA, 50 U.S.C. § 3937, mandates 6 percent simple interest rather than compound interest.

(3) Chase violated 50 U.S.C. § 3937 by charging interest in excess of 6 percent per year on class members' SCRA-eligible credit card debt.

(4) The following promises Chase made to class members are enforceable in contract:

- (a) Between the dates of January 1, 2005 and November 10, 2012, that Chase would apply a maximum annual percentage rate of 6 percent interest to class members' credit card balances existing at the time they began active duty and balances incurred during active duty, and that Chase would waive all fees during this same period;
- (b) Between the dates of November 11, 2012 and April 2, 2013, that Chase would apply a maximum annual percentage rate of 6 percent interest to class members' credit card balances existing at the time they began active duty and balances incurred during active duty and one year following the end of active duty, and that Chase would waive all fees during this same period; and
- (c) Between the dates of April 3, 2013 and the present, that Chase would apply a maximum annual percentage rate of 4 percent interest to class members' credit card balances existing at the time they began active duty and balances incurred during active duty and the year following the end of active duty, and that Chase would waive all fees during this same period.

(5) Chase breached its contractual promises to lower interest rates on class members' credit card balances existing at the time they began active duty and balances incurred during active duty and waive all fees during the same time periods.

The grounds for this motion are set forth in the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment on Liability, Plaintiffs' Local Civil Rule 56.1 Statement of Material Facts and its Appendix, to which is attached the affidavits of Retired Lieutenant Colonel Gregory Huckabee, former Army Reserves Captain Brian Echard, retired Air Force Colonel John Odom, Don Coker, and Jonathan Shefftz, and the declaration of Knoll Lowney, and the exhibits thereto.

Respectfully submitted, this the 1st day of April, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY has been electronically filed with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to the following:

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This the 1st day of April 2020.

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